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SUPREME COURT, U. S.

No. 73-166

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In the Supreme Court of the United States

OCTOBER TERM, 1973

ROSCOE C. JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that his conviction for dealing in firearms without a license should be reversed on the grounds that the statute is impermissibly vague, that his lack of a separate place of business made it impossible for him to obtain a license, and that the government failed to prove at trial his specific intent to violate the law.

After a jury-waived trial in the United States District Court for the Southern District of Ohio, petitioner was convicted of having knowingly engaged in the business of dealing in firearms without a federal firearms license, in violation of 18 U.S.C. 922(a)(1). He was sentenced to a term of probation for one year. On June 21, 1973, the court of appeals affirmed (Pet. App. A). The petition for a writ of certiorari was not filed until July 23, 1973, and is therefore out of time. In any event, there is no merit to petitioner's claims.

The evidence at trial is fully discussed in the opinion of the district court (Pet. App. B, pp. 8-15). As the district court found (*id.* at 15), the evidence supporting the conviction showed that petitioner engaged in "multiple sales of firearms conducted regularly at gun shows on a continuing basis; the setting up of a glass display case; the displaying of numerous long guns and handguns, which are not curios or relics; the taking of orders for firearms; and the profit making from the sale of such firearms." It was undisputed at trial that petitioner did not possess a current federal licence as a firearms dealer or collector.

Petitioner's claims were properly rejected by the courts below, on whose opinions we rely. Any person of ordinary intelligence could be expected to know that the statutory phrase "engaged in the business of dealing in firearms" would encompass conduct involving multiple sales of modern firearms at a profit to customers who visit a glass display case of some forty firearms and who can place orders for other guns not present in the display case at the time of their visit. Nor is the statute invalid because it requires that a dealer in firearms maintain a separate place of business. Congress imposed this requirement as part of a reasonable effort to facilitate the regulation of the sale of firearms and to curtail their use by criminal elements in our society. If petitioner desired to operate as a dealer in firearms, he should have opened an appropriate place of business and obtained a federal license. Finally, 18 U.S.C. 922(a)(1) does not require a showing that an unlicensed firearms dealer specifically knew that he was violating a federal statute. *United States* v. *Freed,* 401 U.S. 601, 607-610. Particularly here, where petitioner once had a firearms dealer's license and where he was mailed pertinent

materials dealing with federal regulation of firearms, no special showing of knowledge was needed.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1973.